

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	
Opportunities of Spectrum Through Incentive)	Docket No. 12-268
Auctions)	
)	

**COMMENTS OF
ACTION COMMUNITY TELEVISION BROADCASTING NETWORK, INC.**

Action Community Television Broadcasting Network, Inc. (“ACTBN”), licensee of WHIG-LD, Rocky Mount, North Carolina, Fac. ID 22800, by its attorneys, hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission in the above-referenced proceeding.¹

The proposals in the NPRM would severely curtail the opportunities of licensees of Class A eligible LPTV stations to participate in the proposed incentive auctions, receive full value for their stations in the incentive auctions and/or operate in the repacked television spectrum band post-incentive auctions. It would be very unwise for the Commission to take such actions as such steps would trample on the public interest inherent in the unique service provided by WHIG-LD and other Class A eligible stations. Moreover, the proposed actions would unjustly deprive such licensees of their rights to operate their stations or at least receive full value for them.

ACTBN has pending before the Commission an application to convert the licensed facilities of WHIG-LD to Class A facilities. See FCC File No. BLTTA-20010709ACV (the “Class A Application”). The Class A Application has been pending for nearly twelve years due

¹ See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking (rel. Oct. 2, 2012) (“NPRM”).

to circumstances beyond the control of ACTBN. Due to baseless Petitions to Deny that were filed in 2002 and 2006 that were eventually dismissed by the Commission, ACTBN was forced to defend its operation of WHIG-LD as a Class A facility while meeting all of the requirements for Class A stations for over a decade.

The last Petition to Deny was dismissed by the Commission in 2008, but it was only within the past three months that the Commission sought to continue processing the Class A Application. ACTBN was asked to submit an amendment to the Class A Application to renew the certification of the qualifications of ACTBN and the Station for Class A status as set forth in the application. ACTBN submitted the requested amendment and certified that the Station has broadcast: (a) a minimum of 18 hours per day; and (b) an average of at least 3 hours per week of programming each quarter produced within the market area served by the Station. Additionally, ACTBN certified that the Station complied with the station operating requirements set forth in subparts H and J of Part 73 of the Commission's rules that are applicable to Class A stations. Therefore, everything is in place for a grant of the long-pending Class A Application.

The Commission proposals in the NPRM would prohibit Class A eligible stations whose applications for Class A status were pending as of the date of enactment of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (the "Spectrum Act") from participating in the reverse auction or protecting these Class A eligible stations' service areas in the spectrum repacking process.² See NPRM, paras. 77, 79 and

² ACTBN also notes that the Commission proposes to exclude stations who filed renewal applications after their licenses expired. See NPRM, para. 78. ACTBN requests that the Commission clarify this proposal such that stations' that submitted an untimely renewal application, but prior to their licenses' expiration date or that stations that submitted renewal application after their license expired but received a grant of special temporary authority from the Commission be included in the reverse auction and the post-auction station protection scheme.

98. This is fundamentally unfair to licensees such as ACTBN that have patiently waited for years for the Commission to remove the clouds on their pending Class A status applications. These licensees have operated their stations as Class A facilities for more than a decade - at considerable expense – only now to have their plans and hopes for the stations seemingly dashed by the proposal to remove these stations from the spectrum consolidation process.

The Commission does recognize that Class A licensees are in a unique situation due to the fact that many of them have not completed their transition to full digital operation as they were not required to do so prior to the enactment of the Spectrum Act. WHIG supports the Commission's proposal to evaluate the bid of Class A licensee in the reverse auction based upon the status of its licensed digital facility on the date of commencement of the reverse auction process. See NPRM, para. 80. However, the Commission should expand this consideration offered to those who held Class A licenses on February 22, 2012, to include those whose Class A status applications were pending as of that date, and were granted prior to the date of commencement of the reverse auction.

This reasoning would also apply to the Commission's proposal to preserve the coverage area and population served of only full power and Class A television stations in the repacking process. Class A eligible licensees must be considered as Class A licensees for this purpose. Such stations are no less worth than those who held pending applications for licenses to cover authorized facilities as of February 22, 2012, which the Commission proposes to protect. See NPRM, para. 98. This is particularly true because the Commission proposes to protect facilities authorized in unbuilt construction permits for new full power television stations as of February 22, 2012, and prospective digital Class A facilities. See NPRM, para. 115. It would be galling and nonsensical to omit Class A eligible stations with pending Class A status application on the

Spectrum Act enactment date if these unbuilt stations were protected. The Commission itself notes that it would be “fundamentally unfair” to exclude prospective digital Class A licensees and “would deprive the public of important benefits of the Class A digital transition.” Such reasoning absolutely applies to those with pending Class A status applications such as ACTBN.

Finally, WHIG-LD provides unique, local programming that is highly valued in the Rocky Mount area. If the station were to be forced to cease operations, the local community would be deprived of the diverse programming that the Commission states should be preserved in the repacking process.

CONCLUSION

Based upon the Commission’s own reasoning, it would be would be arbitrary and capricious for the Commission to omit licensees of stations such as WHIG-LD from the reverse auction and protecting such stations in the repacking process. ACTBN has operated WHIG-LD as a Class A station for over a decade. Accordingly, the Commission must include such stations in its plans for the future of television broadcasting. It is imperative that the agency provide adequate protection for such stations in the rules proposed in the NPRM, not only for the sake of fairness to those licensees, but more importantly in order to maintain the unique service to the public that such stations provide.

Respectfully submitted,

/s/ Nathaniel J. Hardy
Nathaniel J. Hardy
Wood, Martin & Hardy, P.C.
3300 Fairfax Drive
Arlington, VA 22201
(703) 465-2361

Counsel for
Action Community Television Broadcasting Network, Inc.

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